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MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1972
No. 72-5545

NORBERT ENGLER,
Petitioner,

-vs-

INDIANA STATE BOARD
OF LAW EXAMINERS,
Respondent

Certiorari to the
Indiana Supreme Court

PETITION NOT PRINTED

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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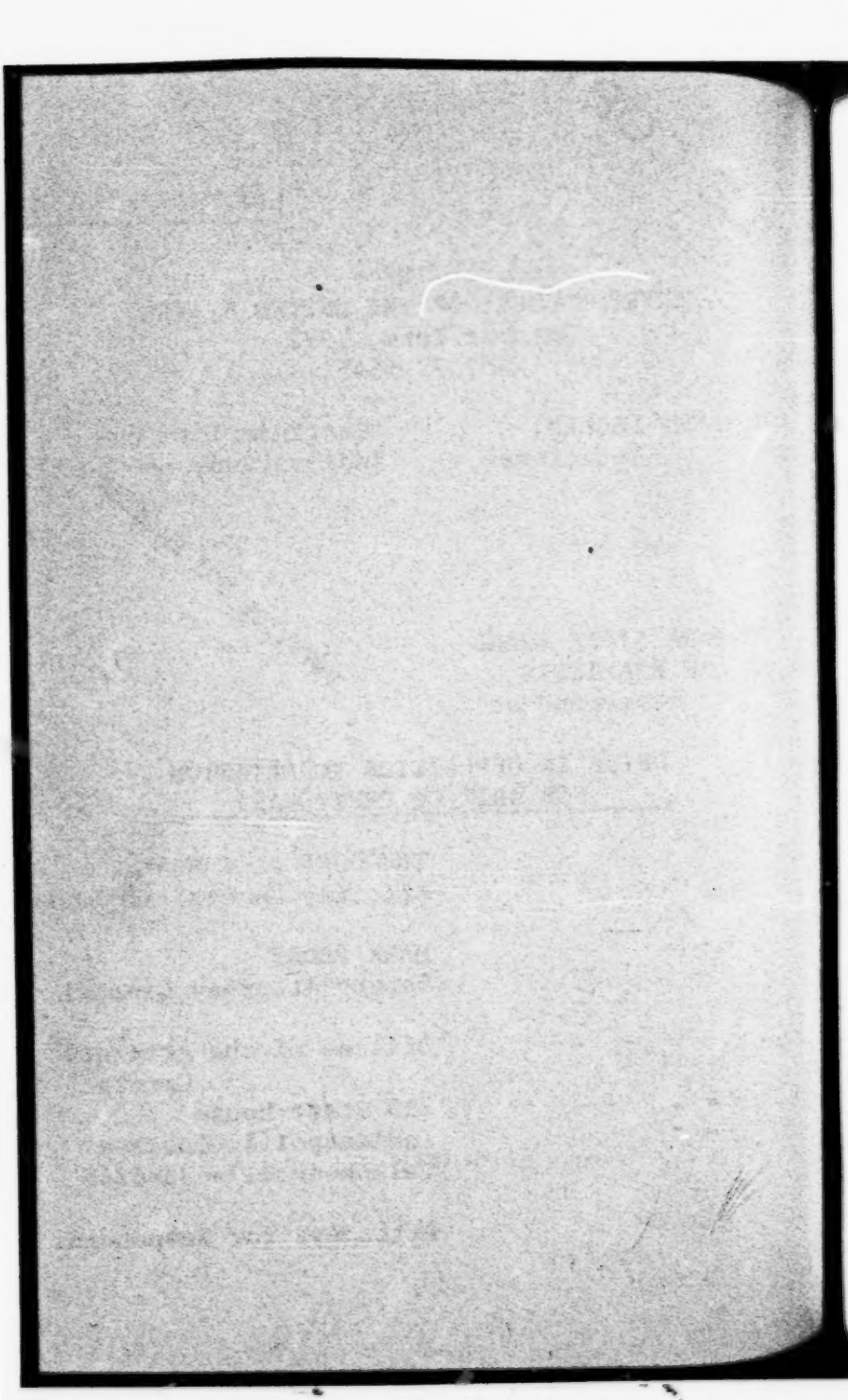

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STATEMENT OF THE CASE

Petitioner took the Indiana Bar Examination on March 16-17, 1972. A passing grade was set at 240 points; petitioner attained a score of only 225.

On May 31, 1972, Petitioner filed in the Indiana Supreme Court a petition for re-

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view pursuant to Admission and Discipline Rule 14 of the Indiana Supreme Court, which rule reads as follows:

> "Any applicant aggrieved by the final action of the state board of law examiners, in refusing to recommend to the Supreme Court of Indiana the admission or reinstatement of the applicant to practice law in Indiana may within twenty (20) days of the final determination by the board, file a petition with the Supreme Court of Indiana requesting review by this court of such final determination and setting forth specifically therein the reasons, in fact or law, assigned as error in the board's determination, and the court may order further consideration of the application, in which event the state board of law examiners shall promptly transmit to the court the complete file relating to such application and his application, including the transcript of the record of any hearing held by the state board of law examiners

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relating thereto, and the court shall enter such order as in its judgment is proper, which shall thereupon become final. (Adopted and effective March 10, 1953; amended February 9, 1971)"

On July 19, the Supreme Court denied the petition with the following order:

"ORDER DENYING 'PETITON FOR REVIEW OF THE FINAL DETERMINATION BY THE STATE BOARD OF LAW EXAMINERS AND ADMISSION TO THE BAR OF NORBERT ENGLER'

Norbert Engler, Petitioner, having filed herein his 'Petition for Review of Final Determination by the State Board of Law Examiners and Admission to the Bar of Norbert Engler' pursuant to the Indiana Supreme Court Admission and Discipline Rule 14, and praying that this Court should review his examination papers of the bar examination given March 16-17, 1972, on which he was graded 225 points by the State Board of Law Examiners, and give him a passing grade on said examination and allow him to be admitted to practice law in the State of Indiana; and this Court, after careful consideration of each answer and the grade given, now

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denies said Petition.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that 'Petition for Review of the Final Determination by the State Board of Law Examiners and Admission to the Bar of Norbert Engler.' is hereby DENIED.

DONE at Indianapolis, Indiana this 19th day of July, 1972.

A.D. Rule 20 states "If an applicant fails his first examination, he shall be entitled to take a second examination without special permission from the board at any time within a period of one (1) year from the date of his first examination.***"

ARGUMENT

PETITIONER WAS AFFORDED DUE PROCESS OF THE LAW

The gist of Petitioner's complaint to this Court is that he was denied the due process of law by the Indiana Supreme Court in its denial of his petition for review of the

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Board of Law Examiners' decision.

The Indiana Supreme Court, in passing upon the Petitioner's petition for review, stated that it gave "careful consideration of each answer and grade given" and determined thereby that the petition should be denied. This is surely all the due process that statutory or constitutional law requires. Petitioner claimed his answers to the bar examination were sufficient to merit a higher score. The Indiana Supreme Court reviewed each question and answer given and concluded otherwise.

The Indiana Supreme Court consideration of the petition for review complied with its Rule A.D. 14. Nothing in that rule requires the court to hold a hearing, evidentiary or otherwise. Nothing in that rule requires the court to consider any evidence

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besides the examination questions, answers and grades given.

Petitioner cites no constitutional authority which would compel this Court to hold that the Indiana Supreme Court failed to afford him due process of law. What Petitioner claims, essentially, is that the Board of Law Examiners graded his papers wrongly. This is a factual question not justifying this Court a decision otherwise. Petitioner poses no broad, constitutional question regarding bar admission qualifications imposed by the state, as was the issue in Law-Students Research Council v. State Bar, 366 U.S. 36. Subject to the due process and equal protection clauses, the matter of choice of persons who will be admitted to practice law in a parti-

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cular state is a subject for state discretion. Harris v. Louisiana State Supreme Court (D.C. La. 1971) 334 F.Supp. 1289. Bar examinations do not easily lend themselves to judicial review, where the issue is not the eligibility of the applicant, but the correctness of the answers given. Feldman v. State Board of Law Examiners (8 Cir. 1971) 438 F.2d 699,703.

The Indiana Supreme Court is under no constitutional requirement to review bar examination questions and answers by unsuccessful examinees. Where the state provided review of the eligibility of applicants, but did not provide review for applicants who took and failed the test, there was no denial of equal protection or due process. Feldman, supra.

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As stated by a lower federal court, no federal question exists here:

> "The Court has stated in effect that it will not engage in a regrading of examination papers as no federal court is likely to do either...if any dissatisfied applicant can show that he was denied passage of the state bar examination through fraud, imposition or coercion*** this court will be willing to listen to his complaint." Chaney v. State Bar of California (9 Cir. 1967) 386 F.2d 962, 967, cert. den. 390 U.S. 1011.

CONCLUSION

For these reasons the petition for writ of certiorari should be denied.

Respectfully submitted,

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Deputy Attorney General

Attorneys for Respondent